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June 2, 2006

Citizen Suit Coordinator
U.S. Dept. of Justice
Environmental & Natural Resource Division
Law and Policy Section
P.O. Box 4390
Ben Franklin Station
Washington, DC 20044-4390

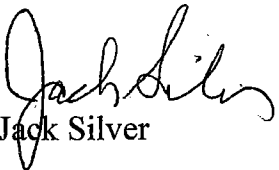
Re: *Northern California River Watch v. Canyon Rock Company, Inc.*,
United States District Court Case No: C04-04670 JSW

ENVIRONMENT & NATURAL
RESOURCES DIVISION
APPELLATE SECTION
2006 JUN -5 PM 2:31

Dear Citizen Suit Coordinator:

Enclosed for your review please find a copy of the Consent Decree and Proposed Order entered into by the parties to this action. The original document is being circulated for signature by the parties and is expected to be filed with the United States District Court within the next 10 days.

Sincerely,

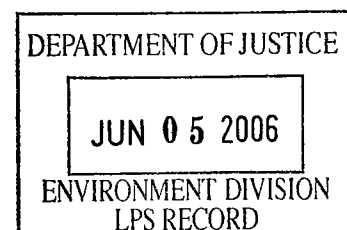


Jack Silver

JS:lmh

Enclosure

cc: Northern California River Watch
cc: William D. Wick, Esquire



90-24-177-02039/SMITH

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10 NORTHERN CALIFORNIA RIVER WATCH

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12 ANNA L. NGUYEN (SBN#. 226829)
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14 180 Grand Avenue, Suite 950
15 Oakland CA 94612-3572
16 Telephone: (510) 465-5750
17 Facsimile: (510) 465-5697
18 BillWick@ww-envlaw.com

19 Attorneys for Defendants
20 CANYON ROCK COMPANY, INC.
21 RIVER ROCK READY MIX, INC.

22 UNITED STATES DISTRICT COURT
23 NORTHERN DISTRICT OF CALIFORNIA

24 NORTHERN CALIFORNIA RIVER WATCH, a non- CASE NO: C 04 04670 JSW
25 profit Corporation,

26 Plaintiff,

27 **CONSENT DECREE AND ORDER**

28 v.

29 CANYON ROCK COMPANY; RIVER READY MIX,
30 INC.; and DOES 1-10, Inclusive,

31 Defendants.
32 _____/

33 //

34 //

35 C04 04670 JSW

36 Consent Decree and Order

90-1-24-177-02039/SMITH

2006 JUN -5 PM 2:31
ENVIRONMENT & NATURAL
RESOURCES DIVISION
APPELLATE SECTION

1 WHEREAS, on or about November 3, 2004 plaintiff Northern California River Watch, a non profit
2 corporation, on behalf of itself and its members, ("RIVER WATCH") filed this action alleging that
3 defendant, Canyon Rock Company dba River Ready Mix, Inc., ("CANYON ROCK") was in violation of the
4 Clean Water Act ("CWA"), 33 U.S.C. §1251 et seq., specifically Section 505, 33 U.S.C. §1365 and
5 Section 301, 33 U.S.C. § 1311 and under Business and Professions Code § 17200 et seq.; after serving
6 notice on CANYON ROCK and the appropriate governmental agencies; and,

7 WHEREAS the Complaint requests declaratory and injunctive relief, the imposition of civil
8 penalties for each violation of the aforementioned laws and statutes, and an award to RIVER WATCH of
9 its litigation costs, including reasonable attorney fees and costs; and,

10 WHEREAS CANYON ROCK vigorously denied the alleged violations, and asserted a counterclaim
11 seeking declaratory relief that it is in compliance with the Clean Water Act; and,

12 WHEREAS, on October 13, 2005 the parties met with ADR-appointed Helen H. Kang and were
13 able to resolve all disputes; and,

14 WHEREAS the parties agree that it is in their mutual interests to enter into this Consent Decree
15 setting forth the terms and conditions appropriate to resolving the allegations set forth in the Complaint;
16 and,

17 WHEREAS this Consent Decree constitutes a full and final adjudication of all claims
18 in this action arising from or relating to the allegations in the Complaint that were, or could have been,
19 asserted against CANYON ROCK, including but not limited to any claim based upon alleged violations of
20 the Clean Water Act (33 U.S.C. § 1271 et seq.), or any other statute or provision of common law. It is
21 not an admission of jurisdiction over or liability for any claims or an admission of any fact;

22 WHEREFORE, the parties have consented to the entry of this Consent Decree and Order without
23 trial of any issues and hereby stipulate that, in order to settle the claims alleged in the Complaint and
24 the Counterclaim, this Consent Decree should be entered.

25 //

26 //

27

1 **PREAMBLE**

2 1. RIVER WATCH's claims relate to CANYON ROCK's historical and continuing activities at its rock
3 quarry and cement recycling and manufacturing facilities (hereafter, "FACILITIES") located on Highway
4 116 in Sonoma County near the town of Forestville, California. The FACILITIES are commercial
5 businesses selling rock, gravel, and cement, to developers, builders, and individuals.

6 2. RIVER WATCH's Complaint alleges CANYON ROCK had been violating the Clean Water Act at
7 the FACILITIES by discharging stormwater into Green Valley Creek, the Russian River, its tributaries,
8 wetlands, and/or hydrologically connected water bodies all of which are waters of the United States, in
9 violation of California's General Permit ("General Permit") for discharges of stormwater associated with
10 Industrial activities, and without a National Pollutant Discharge Elimination System ("NPDES") permit;
11 and, by failing by to adequately develop a SWPPP and Monitoring Program in compliance with
12 California's General Permit ("General Permit") for discharges of stormwater associated with industrial
13 activities.

14 3. CANYON ROCK's site is bounded on the south east side by Green Valley Creek. The site has two
15 main ponds and two small ponds. One of the small ponds is used primarily for concrete loading and
16 washout. The ponds are unlined. All discharges are intended to be directed to the ponds prior to
17 discharge into Green Valley Creek. Green Valley Creek is a major tributary of the Russian River which is
18 listed as impaired for sediment under Section 303(d) of the Clean Water Act. Volunteers launched a
19 major creek restoration effort just downstream of CANYON ROCK in 2003, involving the National
20 Oceanic and Atmospheric Administration and the Department of Fish and Game.

21 4. After several years, CANYON ROCK has almost completed the construction of a large new cement
22 batch plant and relocation of its cement batch plant out of the floodway of Green Valley Creek. This
23 reduces the likelihood of releases to Green Valley Creek.

24 5. CANYON ROCK has graded the western portion of the property so that it slopes away from Green
25 Valley Creek. In addition CANYON ROCK has plans to enlarge its pond system. The berms on the
26 property are good and support some vegetation.

TERMS OF CONSENT DECREE

I. CANYON ROCK MEASURES

A. CANYON ROCK agrees to comply with the following requirements of the Region I Basin Plan and the following EPA benchmarks in the draft stormwater permit:

(1) pH: 8.

(2) TSS: 100 mg/L

B. CANYON ROCK agrees to undertake the following measures:

(1) Hydro seed and/or apply soil binders as needed and where feasible, in areas not subject to mining operations (including overburdens and high walls, roads, yards and berms).

(2) Within six months, remove the existing cement batch plant and bins from the present location and re-locate to an area farther from Green Valley Creek;

(a) Within one year, pave the cement batch plant area and parking lot;

(b) Until the existing cement batch plant is relocated, install a bigger pump or initiate a process to reduce excess turbidity and sediment.

(3) Review and update the SWPPP as necessary by July 1 of each year.

(a) Incorporate into the SWPPP the following mitigation measure:

"Mining activities and the operation of heavy equipment on site shall be done in such a manner as to avoid repeated crossing of drainage ways or puddles that are actively flowing into the sediment pond/traps and offsite."

(b) Attach as an appendix to the SWPPP the Material Safety Data Sheet for cement.

(4) Within one year, increase the width and height of the berm between the yard and Green Valley Creek.

1 (5) Without waiving or compromising in any respect its rights to well water on its property,
2 CANYON ROCK agrees not to substantially increase its use of the well at the facility
3 nearest Green Valley Creek for its day-to-day operations, unless no alternative source of
4 water is available at reasonable cost.

5
6 (6) For two seasons, monitor for storms that generate discharge to Green Valley Creek (one
7 at first flush and thereafter, sampling at least two weeks apart). CANYON ROCK will
8 notify RIVER WATCH representatives as soon as reasonably possible, but no less than
9 two hours, of its plans to sample. At reasonable times, RIVER WATCH representatives
10 may contact CANYON ROCK representatives to ask if sampling is likely.

11
12 (7) For two years in a row, sample water in the ponds at first flush and once during the
13 summer, and provide notice to RIVER WATCH and allow RIVER WATCH to take split
14 samples (at its own expense) if it chooses to do so. The samples will be analyzed for the
15 following compounds: arsenic, cadmium, total chromium copper, lead, mercury, nickel,
16 zinc, total aluminum, TPHg, TPHd and MTBE.

17
18 **II. MITIGATION FEES AND COSTS**

19 A. CANYON ROCK shall pay the sum of Eight Thousand Dollars (\$8,000.00) to the Redwood Empire
20 Environmental Center, with the funds dedicated to restoration activities related to Austin Creek
21 and/or the Russian River. Such payment has been delivered to the Law Office of Jack Silver,
22 but shall be returned if this Consent Decree is not entered.

23 B. As a Supplemental Environmental Project, CANYON ROCK agrees to install a treatment system to
24 treat the discharge from CANYON ROCK's pond (In the former Ready Mix area) to Green Valley
25 Creek. CANYON ROCK agrees to investigate and install a treatment system to most efficiently
26

1 reduce sediment to Green Valley Creek, at an anticipated total cost of Fifty Thousand Dollars
2 (\$50,000.00) or less.

3 C. CANYON ROCK shall reimburse RIVER WATCH in the amount of Forty-Eight Thousand Dollars
4 (\$48,000.00) to help defray RIVER WATCH's investigation fees and costs, expert fees and costs,
5 reasonable attorneys' fees, and all other costs incurred as a result of investigating the activities
6 of CANYON ROCK and negotiating a resolution of the lawsuit. Such payment has been delivered
7 to the Law Office of Jack Silver, but shall be returned if this Consent Decree is not entered.
8 This sum will constitute a complete settlement of RIVER WATCH's claims for any and all costs
9 and fees incurred in this action to the date of entry of this Consent Decree.
10

11 **III. RELEASES**

12 A. RELEASE OF CANYON ROCK BY RIVER WATCH

13 In exchange for the consideration set forth herein RIVER WATCH covenants not to sue and
14 hereby releases and discharges CANYON ROCK from (1) any and all claims, costs, expenses,
15 damages or losses arising or relating to this lawsuit, and (2) any and all claims, costs, expenses
16 damages or losses which RIVER WATCH could have asserted and could now assert.

17 B. RELEASE OF RIVER WATCH BY CANYON ROCK

18 In exchange for the consideration set forth herein, CANYON ROCK covenants not to sue and
19 hereby releases and discharges RIVER WATCH from (1) any and all claims, costs, expenses,
20 damages or losses arising or relating to this lawsuit, and (2) any and all claims, costs, expenses
21 damages or losses which CANYON ROCK could have asserted and could now assert.

22 C. INTENDED SCOPE OF RELEASE

23 To the fullest extent possible, this CONSENT DECREE shall act as a full and final resolution of
24 any and all claims, actions, causes of action based on any statute or provisions of common law,
25 whether legal or equitable, and all liability arising out of, or in any way related to, claims arising
26 out of the operation of or discharges from CANYON ROCK's FACILITIES at any time up to the
27

1 effective date of this CONSENT DECREE, which were raised or could have been raised in this
2 litigation.

3 **D. EXCEPTED CLAIMS FROM RELEASE**

4 The parties to this CONSENT DECREE acknowledge and agree that the releases set out above do
5 not apply to any action or claim by either party to enforce the terms of this CONSENT DECREE.

6 **E. WAIVER OF RIGHTS UNDER CALIF. CIVIL CODE SECTION 1542**

7 With respect to the claims released under this Paragraph, each party to this CONSENT DECREE
8 expressly and specifically waives any rights and benefits available to it under Calif. Civil Code
9 Section 1542, which provides:

10 "A general release does not extend to claims which the creditor does not know or suspect to
11 exist in his favor at the time of executing the release, which if known by him must have
12 materially affected his settlement with the debtor."
13

14 **IV. NON-PARTICIPATION IN FUTURE ACTIONS**

15 RIVER WATCH agrees that neither RIVER WATCH (including, without limitations, its officers,
16 executive staff, members of its governing board), nor any organization under the control of RIVER
17 WATCH, its officers, its executive staff, or members of its governing board, will file any suit, claim or
18 action against CANYON ROCK for violations that were the subject of this lawsuit or claims released in
19 Paragraph III.A. RIVER WATCH agrees that RIVER WATCH will not support others suits, claims or
20 action, by providing financial assistance, personnel time or other affirmative actions against CANYON
21 ROCK that may be proposed by other groups or individuals with regard to the kinds of claims or
22 violations that were the subject of this lawsuit or claims released in Paragraph III.A. RIVER WATCH
23 further agrees not to file any suit, claim or action against CANYON ROCK or support other suits, claims
24 or actions, by providing financial assistance, personnel time or other affirmative actions against CANYON
25 ROCK that may be proposed by other groups or individuals, without implementing the following disputes
26 resolutions procedures:
27

- 1 A. If RIVER WATCH believes CANYON ROCK is in violation of any environmental law, RIVER WATCH
2 shall notify CANYON ROCK of the alleged violation(s) in writing. CANYON ROCK shall then have
3 twenty (20) days from receipt of the written notice to respond to the allegations.
- 4 B. If CANYON ROCK responds to the claim of violation and proceeds to commence remedial actions
5 within forty (40) days of RIVER WATCH's written notice of the alleged violation, and diligently
6 pursues completion, RIVER WATCH shall take no further action against CANYON ROCK.
- 7 C. If CANYON ROCK denies or fails to acknowledge the claim of violation, the parties shall meet
8 and confer within thirty (30) days of the date for CANYON ROCK's response pursuant to
9 Paragraph IV.A in an effort to mediate the dispute.
- 10 D. If the parties cannot informally resolve the conflict, the parties shall submit the matter to
11 mediation within thirty (30) days or as soon as reasonably possible after the date they informally
12 met and conferred.
- 13 E. Should mediation fail, either party may apply to a court of competent jurisdiction for relief.
14

15 **V. DISPUTE RESOLUTION**

- 16 A. Should the implementation by CANYON ROCK of the conditions set forth above not take place
17 within the deadlines set despite the timely good faith efforts of CANYON ROCK to acquire the
18 necessary permit(s), approval(s), review or other necessary steps by the supervising Federal,
19 State or local agency or agencies, or due to factors unforeseen at the time this CONSENT
20 DECREE was entered into by the parties, CANYON ROCK agrees to meet and confer with RIVER
21 WATCH to discuss modifying, by written agreement, the deadlines or conditions set forth above
22 to reflect the necessary permitting process(es) or other basis for delay. CANYON ROCK shall
23 notify RIVER WATCH in writing as soon as the potential failure to comply becomes apparent, and
24 in any case not less than twenty (20) days prior to any deadlines set forth above, and shall
25 describe the reasons for the potential delay.
- 26
- 27

- 1 B. If RIVER WATCH believes CANYON ROCK is in violation of this CONSENT DECREE, RIVER
2 WATCH shall notify CANYON ROCK of the alleged violation(s) in writing. CANYON ROCK shall
3 then have twenty (20) days from receipt of that written notice to respond to the allegations.
- 4 C. If CANYON ROCK responds to the claim of violation(s) and proceeds to commence remedial
5 actions within forty (40) days RIVER WATCH's written notice of the alleged violation(s), and
6 diligently pursues completion, RIVER WATCH shall take no further action against CANYON ROCK.
- 7 D. If CANYON ROCK denies or fails to acknowledge the claim of violation, the parties shall meet
8 and confer within thirty (30) days of the date for CANYON ROCK's response pursuant to
9 Paragraph V.B. in an effort to mediate the dispute.
- 10 E. If the parties cannot informally resolve the conflict , the parties shall submit the matter to
11 mediation within thirty (30) days or as soon as reasonably possible after the date they informally
12 met and conferred.
- 13 F. Should mediation fail, either party may apply to a court of competent jurisdiction for relief.
14

15 **VI. NO ADMISSIONS**

16 This CONSENT DECREE shall not constitute, and no action taken pursuant to this CONSENT
17 DECREE shall constitute, any admission of fact, liability, causation, responsibility or fault, or
18 proportionate share thereof, by any party with respect to any matter referred to herein. This CONSENT
19 DECREE shall not be used by any party in any administrative or judicial action or proceeding, or in any
20 arbitration or alternative dispute resolution proceeding for any purpose, except for the purpose of
21 establishing its terms in any action to enforce the terms of this CONSENT DECREE.
22

23 **VII. AUTHORITY OF REPRESENTATION**

24 Each of the parties to this CONSENT DECREE represents and warrants that the person(s)
25 executing this CONSENT DECREE on its behalf is a representative duly authorized to bind it and is
26 empowered to enter into this CONSENT DECREE on its behalf.
27

1 **VIII. NOTICES**

2 Any notice required or permitted to be given pursuant to this CONSENT DECREE shall be in
3 writing and shall be deemed to be given when served personally or by facsimile, or on the tenth (10th)
4 day after mailing if mailed by United States mail, postage prepaid, return receipt requested, and
5 addressed to the address for each party as set forth below:

6 If to RIVER WATCH:
7 Northern California River Watch
8 6741 Sebastopol Avenue, Suite 140,
9 Sebastopol, CA 95472
10 Telephone: 707-824-4372
11 Facsimile: 707-824-4372

12 WITH A COPY TO:

13 Jack Silver, Esquire
14 Law Office of Jack Silver
15 Post Office Box 5469
16 Santa Rosa, CA 95402
17 Telephone: 707-528-8175
18 Facsimile: 707-528-8675

19 If to CANYON ROCK:

20 Wendel Trappe
21 Canyon Rock Co., Inc.
22 P.O. Box 639
23 Forestville, CA 95436
24 Telephone: 707-887-2207
25 Facsimile: 707-887-9258

26 WITH A COPY TO:

27 William D. Wick, Esquire
28 Wactor & Wick, LLP
180 Grand Avenue
Suite 950
Oakland, CA 94612
Telephone: 510-465-5750
Facsimile: 510-465-5697

1 **IX. COUNTERPARTS AND FACSIMILE SIGNATURES**

2 Each signatory of this CONSENT DECREE signing on behalf of another, warrants that
3 he or she has the authority to sign on behalf of said person or entity and on behalf of all persons
4 covered by this CONSENT DECREE. This CONSENT DECREE may be executed in counterparts with each
5 counterpart being interpreted as an original. Any party may transmit its execution of this CONSENT
6 DECREE by facsimile, in which case such party shall provide the original execution page within three (3)
7 business days to the other party. A party's execution page transmitted by facsimile may be used as
8 though it were an original signature notwithstanding the fact that the party did not provide an original
9 signature.
10

11 **X. ADVICE OF ATTORNEYS**

12 Each party herein has evaluated its respective position with regard to this matter through its
13 own investigation and through its attorneys. Each party acknowledges that it enters into this
14 CONSENT DECREE upon the advice of its respective attorneys, that it has read this CONSENT DECREE,
15 discussed it with its attorneys, that the terms and conditions of this CONSENT DECREE are fully
16 understood and that it freely and voluntarily enters into this CONSENT DECREE.
17

18 **XI. CONSTRUCTION OF AGREEMENT**

19 The parties acknowledge that this CONSENT DECREE is the product of informed negotiating
20 among the parties, and if any part of this CONSENT DECREE is deemed ambiguous or in conflict, it shall
21 be construed as if it were drafted jointly by all parties.
22

23 **XII. ENTIRE AGREEMENT**

24 The parties warrant and agree that this CONSENT DECREE constitutes the entire agreement
25 between them concerning the subject matter hereof. Each party represents, warrants and agrees that
26 no promise or agreement not expressed herein has been made to it; that in executing this CONSENT
27

1 DECREE, no party is relying on any statement or representation made by any other party, or any other
2 party's representatives concerning the subject matter, basis or effect of this CONSENT DECREE other
3 than as set forth herein; and, that each party is relying solely on its own judgment and knowledge.
4

5 **XIII. SEVERABILITY**

6 Except for Paragraph III. RELEASES, each provision of this CONSENT DECREE is intended to be
7 severable. If any provision (or the application of any provision to any party or circumstance) of this
8 CONSENT DECREE other than Paragraph III is declared to be illegal, invalid or unenforceable for any
9 reason, such illegality shall not invalidate the remainder of this CONSENT DECREE. In that event, this
10 Consent Decree shall be construed as if it did not contain the invalid or illegal part, and the rights and
11 obligations of the parties shall be construed and enforced accordingly. If any portion of Paragraph III is
12 declared invalid or unenforceable in any material respect, the affected party shall have the right to
13 rescind this CONSENT DECREE.
14

15 **XIV. MODIFICATION**

16 The terms of this CONSENT DECREE shall not be changed, revised, or modified except by a
17 written instrument signed by the parties to this Consent Decree and shall not take effect until entered by
18 the Court.
19

20 **XV. GENERAL PROVISIONS**

- 21 A. The contractual interpretation of this CONSENT DECREE and all obligations, rights, privileges,
22 and responsibilities under it shall be governed and construed in accordance with applicable
23 federal law.
- 24 B. Nothing in this CONSENT DECREE creates, nor will be construed as creating, any claim in favor
25 of any person not a party to this CONSENT DECREE.
26
27

- 1 C. This CONSENT DECREE may be executed in two or more counterparts or in separate signature
2 pages, each of which shall be deemed an original, but all of which, together, will constitute one
3 and the same instrument.
- 4 D. Good faith and best efforts are an implied term regarding each party's duty to comply with the
5 terms of this CONSENT DECREE and Order.
- 6 E. Each party consents to the entry of this CONSENT DECREE and Order subject to the provisions
7 of Clean Water Act § 505(c)(3) that "[n]o consent judgment shall be entered in an action in
8 which the United States is not a party prior to forty-five (45) days following the receipt of a copy
9 of the proposed consent judgment by the Attorney General and the Administrator [of the U.S.
10 EPA]." 33 U.S.C. §§ 1354(c)(3).
- 11 F. On 06-02-06, 2006, RIVER WATCH sent this proposed CONSENT DECREE and Order by
12 mail to the U.S. Attorney General and the Administrator of the U.S. EPA. Upon written
13 notification by U.S. EPA and/or U.S. Department of Justice that those agencies' reviews have
14 concluded, or the expiration of the forty-five (45) day period, whichever is the earlier, the shall
15 Court enter this CONSENT DECREE and Order.
- 16 G. This Court shall retain jurisdiction from the date of entry of this CONSENT DECREE and Order
17 through the date of termination of this CONSENT DECREE and Order for the purposes of (1)
18 resolving any dispute of this CONSENT DECREE, and (2) disposing of any motion to enforce this
19 CONSENT DECREE, or of any contempt petition, filed on or before the date of termination.

20
21 The undersigned agree to the foregoing:

22
23 Dated: _____ Northern California River Watch,
Plaintiff

24 By: _____

25

26

27

1 Dated: _____ Canyon Rock Company dba River Ready Mix, Inc.
2 Defendant

3 By: _____
4

5 APPROVED AS TO FORM:
6

7
8 Dated: _____
9 Jack Silver, Esq.
Attorney for Plaintiff
Northern California River Watch
10

11
12
13 Dated: _____
14 William D. Wick, Esq.
Attorney for Defendant
Canyon Rock Company dba River Ready Mix, Inc.
15
16
17
18
19
20

21 ORDER

22 APPROVED AND SO ORDERED,
23
24

25 DATED: _____

26 Honorable Jeffrey S. White
United States District Judge